

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.11818 OF 2004

Sankarsan Das

....

Petitioner(s)
M/s.P.Behera,Adv.

-versus-

The Collector, Bhadrak and others

....

Opposite Party(s)
Mr.S.Mishra,ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER

24.09.2022

Order No.

07.

1. Heard learned counsel for the Parties.
2. This Writ Petition at the instance of the Petitioner being Opposite Party to a proceeding instituted under Section 35 of the O.C.H. & P.F.L. Act involving O.C.H. Misc. Case No.04 of 2003. Ground of attack involving the impugned order at Annexure-5 appears to be to answer the dispute raised by both parties, the competent authority appears to have called for a report from the Tahasildar, Bonth and such a report being submitted by the Tahasildar, decision has been taken solely on the basis of such report unfortunately without even supply of copy to the Petitioner herein.
2. It is contended by learned counsel for the Petitioner that had the report been accessed, the Petitioner would have been in a position to clarify the possession. Learned counsel for the Petitioner thus requests this court for at least a remand of the proceeding and re-adjudication of the issue therein after giving an opportunity to the Petitioner to access the report and his submission accordingly.
3. This Court here finds Petitioner has specific allegation of non-supply of the report in paragraph-6. There is no counter filed to this

objection of the Petitioner. Even though the matter involves a statutory proceeding, for the opinion of this Court keeping in view the specific allegation in paragraph-6, a counter should have been filed by the public authority at least by disclosing there has been supply or non-supply of the report involved in absence of which this Court finds there is no possible response by the learned State Counsel on Annexure-5.

4. In the circumstance and as this Court finds, Petitioner has a strong ground that competent authority taking into account a report without furnishing copy of the same to the Petitioner, a contestant in the proceeding involved the order, if any, becomes illegal. As an outcome, this Court interferes at Annexure-5 and sets aside the same. However for technical interference in the impugned order on technical reason, the proceeding cannot go away. This Court therefore directs re-commencement of the proceeding vide Annexure-5. However for there is no cooperation of the contesting Opposite Parties in the High Court proceeding on supply of the copy of this Court's order by the Petitioner at least within one working week, the competent authority shall do well in issuing notice to the Petitioner therein and attempt to freshly dispose of the proceeding vide O.C.H. Misc. Case No.4 of 2003 vide Annexure-5 and freshly dispose of the proceeding after involving both the parties however also providing supply copy of the report of the Tahasildar, Bonth appears to have been submitted vide letter No.1789 dated 23.09.2004.

5. The Writ Petition stands succeed however with an order of remand. The proceeding shall be freshly disposed of at least within a period of four months from the date of communication of this order.

(Biswanath Rath)
Judge